EXHIBIT K

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

Privacy Office, Mail Stop 0655

May 16, 2012

SENT VIA EMAIL TO: ANTHONY.ELISEUSON@SNRDENTON.COM

Mr. Anthony Eliseuson
SNR Denton US LLP

Re: **DHS/OS/PRIV 11-1242**

Dear Mr. Eliseuson:

This is the electronic final response to your September 1, 2011, Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), and your request for a fee waiver, media status, and expedited processing. You are seeking the following information:

1. Documents related to the list of Tier III terrorist organizations: A) A copy of the list of Tier III terrorist organizations kept by USCIS as referred to in Ahmed v. Scharfen, No. 08-1680, 2009 U.S. Dist. LEXIS 591, at *21 (N.D. Cal. Jan 7, 2009), as it existed on December 15, 2008, when the government's counsel represented to the court that such a list exist; B) A copy of each subsequent list of Tier III terrorist organizations kept by USCIS after the list referenced in Ahmed v. Scharfen; C) All documents produced by the USCIS, DHS, or any other subcomponent of DHS in Ahmed v. Scharfen, No. 08-1680 (N.D. Cal.), not including documents that specifically relate only to Plantiff Saeed Ahmend; and D) Any documents listing or describing organizations which have been designated Tier III terrorist organizations but which have yet to be used as a basis of inadmissibility against an applicant.;

2. All internal reports, memoranda, studies, analyses, policy statements, policy manuals, guides, training materials, or communications, including email, that discuss: A) The Tier III terrorist organization ground of inadmissibility; B) the use of the Tier III terrorist organization ground of inadmissibility; C) The interpretation of implementation of the Tier III terrorist ground of inadmissibility; D) The criteria for determining whether to classify an organization as a Tier III terrorist organization ground of inadmissibility; and E) A justification or reason for applying the Tier III terrorist organization ground of inadmissibility.;

This includes, but is not limited to, the June 1, 2007, Interoffice Memorandum sent by Joseph E. Langlois, Chief, Asylum Division, Office of Refugee, Asylum, and International Operations.

3. A copy of the "general index of the records" required by 5 U.S.C. § 552(a)(2)(E).;

4. A copy of index of indices of documents that contains a title, heading, category, or subcategory that includes documents relating to Tier III terrorist organizations or the Tier III terrorist organization grounds of inadmissibility.;

5. Documents related to the Consolidated Appropriations Act of 2008, Act Dec. 26, 2007, P.L. 110161, Div J, Title VI, § 691(e), 121 Stat. 2365 ("CAA of 2008"): A) Copies of all non-classified portions of each and every report on duress waivers required by the CAA of 2008; B) To the extent any portions of

any report on duress waivers is being excluded from the foregoing request on the basis that those portions are classified, copies of documents demonstrating the basis for such classification under Executive Order 13526 and 32 C.F.R. 2001.1, et seq.; C) Any documents, communications, or emails relating to each report on duress waivers required by the CAA of 2008; D) Copies of all reports, spreadsheets, memoranda, or other documents providing statistical information regarding "cases considered for and granted exemptions in order for USCIS to comply with Congressional reporting requirements" as set forth in the Interoffice Memorandum dated July 28, 2008, from Michael Aytes to Associate Directors, et. al., (70/21.1.9);

6. Any documents demonstrating that only employees, officers, or officials of DHS, USCIS, or ICE that have classified or security status have been provided with access to the list of Tier III terrorist organizations or other allegedly classified information regarding the Tier III terrorist organization grounds of inadmissibility.;

7. Copies of any other FOIA requests received seeking information regarding the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations policies, procedures, practices, or customs adopted or used by DHS, USCIS, or ICE while they were so employed.;

8. All statements of policy and interpretations that have been adopted by the agency and are not published in the Federal Register relating to Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations.;

9. All administrative staff manuals and instructions to staff that affect a member of the public relating to Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations.;

10. Copies of any list or index describing statements of policy and interpretations that have been adopted by the Agency and are not published in the Federal Register, and administrative staff manuals and instructions to staff that affect a member of the public created by or in the possession of the Agency, regardless of subject matter.;

11. If any documents have been distributed to any individuals or groups outside the United States government that reflect the names of any groups or organizations that have been listed as Tier III terrorist organizations, please provide all communications with those groups or individuals with regard to those documents. If DHS has a policy with regard to the distribution of documents related to Tier III terrorist organizations, including a policy of when to release to foreign governments, please provide a copy of that policy.;

12. Documents related to the process by which Tier III terrorist organizations are defined: A) Any documents identifying or relating to the research methods or sources permitted, prohibited, or actually relied upon in order to gain the information necessary to determine whether an organization satisfies the definition of a Tier III terrorist organization, including any materials citing sources by name (including, but not limited to, websites) or those concerning the criteria to be used in determining whether a source should be relied upon in deciding whether an organization should be classified as a Tier III terrorist organization; B) Any documents specifically identifying or describing the persons with authority to designate an organization or group as a Tier III terrorist organization; C) Any documents which provide substantive or procedural guidance relating to the designation of an organization as a Tier III terrorist organization, including any documents relating to how a designation is officially recorded or logged; D) Any documents describing or relating to whether or how a decision to classify an organization as a Tier III terrorist organization is reviewed; E) Any documents listing, identifying or describing who is responsible for reviewing, overturning, or rejecting the classification of individual organizations as Tier III terrorist organizations. F. Any documents detailing or relating to total or average length of time spent

in the process of determining whether an organization constitutes a Tier III terrorist organization; G) Any documents detailing or relating to total or average cost or expense incurred in the process of determining whether an organization constitutes a Tier III terrorist organization; H) Any documents regarding the amount of deference that is or should be given to a previous designation.;

13. Any documents reflecting the total number of occasions when the Tier III terrorist organization grounds of inadmissibility has been raised, including any documents reflecting or relating to the number of occasions or frequency with which each service center, local office, or DHS-ICE Office of Chief Counsel has raised the Tier III terrorist organization grounds of inadmissibility.;

14. All completed 212(a)(3)(B) Exemption Worksheets (as promulgated in the Interoffice Memorandum dated July 28, 2008, from Michael Aytes to Associate Directors, et. al.), as well as any documents concerning the completion and submission of these worksheets, including but not limited to, instructional materials, memoranda, lists, reports, directives, correspondence, data, statistics, or internal guidelines, whether in letter or electronic form.;

15. Copies of any reports, memoranda, spreadsheets, or other documents provided by the Agency to any Congressional committee, including the House and Senate Judiciary Committees, or any members or staff thereof, regarding Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations.;

16. All documents, communications, and emails between DHS, USCIS, and ICE, and any member of the United States Congress, including both elected Representatives, Senators, their staff, and any committees or subcommittees specifically discussing or referencing the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations.;

17. All documents demonstrating that each and every organization or group listed, defined, labeled or described as a Tier III terrorist organization by DHS, USCIS, or ICE has in fact engaged in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv) of that Section.;

18. Documents related to Senate Hearing 109-918, Aiding Terrorists: An Examination of the Material Support Statute, May 5,2004 ("Senate Hearing 109-918"): A) Any lists, index, or indices of the documents provided to the Committee on the Judiciary of the United States Senate, any Senator on the Committee or the staff of any Senator on the Committee relating to Senate Hearing 109-918; B) Copies of all documents provided to the Committee on the Judiciary of the United States Senate, any Senator on the Committee or the staff of any Senator on the Committee relating to Senate Hearing 109918 regarding the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations;

19. Any email, report, or communication from any DHS, USCIS, ICE, OIG or other DHS subcomponent employee, official, or officer, related to the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations policies, procedures, practices, or customs adopted or used by DHS, USCIS, or ICE.;

20. All documents associated with any investigation or inquiry deemed to be entitled to whistleblower protection or falling under the No FEAR Act, or other similar non-retaliation statute, policy or practice, regarding the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations policies, procedures, practices, or customs adopted or used by DHS, USCIS, or ICE.;

21. All documents listing employees, officers, or officials of DHS, USCIS, or ICE that have been fired, terminated, laid off, or who voluntarily left their employment, who would have had

knowledge regarding the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations policies, procedures, practices, or customs adopted or used by DHS, USCIS, or ICE while they were so employed.;

22. All documents or communications between the DHS Office of Chief Counselor the ICE Office of Chief Counsel and USCIS service centers or local offices regarding the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations.;

23. Any correspondence, including emails and interoffice memoranda, between DHS and any other representative of the United States Government (e.g., other federal agencies, Members of Congress, etc.) and between DHS and any person or entity other than a representative of the United States Government (e.g., private citizens, private companies, foreign citizens, foreign governments) regarding the substantive criteria or procedural guidelines used to determine whether an organization constitutes a Tier III terrorist organization.;

24. Any documents relating to communication with the media concerning the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations, including internal communications regarding media inquiries.;

25. To the extent the Agency invokes "unusual circumstances," under Section 552(a)(6)(B)(iii)(III) in response to these requests, all documents, including, but not limited to, emails and communications, between the Agency and any other subcomponent or agency relating to these requests.; and

26. To the extent the Agency cites a backlog of FOIA requests to attempt to justify a delay in processing these requests, all documents demonstrating the Agency is making reasonable progress in reducing its backlog of pending requests, and the Agency's specific efforts in that regard.

A search within the Executive Secretariat for documents responsive to your request produced a total of 33 pages. Of those pages, I have determined that 28 pages are releasable in their entirety and 5 pages are partially releasable pursuant to Title 5 U.S.C § 552 (b)(6), FOIA Exemption 6. The documents are enclosed with certain information withheld as described below:

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

You have a right to appeal our withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the $14 minimum, there is no charge. 6 CFR 5.11(d)(4).

If you need to contact this office concerning this request, please call 1-866-431-0486 and refer to **DHS/OS/PRIV 11-1242.**

Sincerely,

Angela Washington
FOIA Program Specialist

Enclosure: As stated, 33 pages

ED PERLMUTTER
7TH DISTRICT, COLORADO

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WASHINGTON, DC 20515
PHONE: (202) 225-2645
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DISTRICT OFFICE:
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SUITE B-400
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Congress of the United States
House of Representatives

COMMITTEES:
FINANCIAL SERVICES
CAPITAL MARKETS, INSURANCE, AND GOVERNMENT SPONSORED ENTERPRISES (GSEs)

FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

HOMELAND SECURITY
INTELLIGENCE, INFORMATION SHARING, AND TERRORISM RISK ASSESSMENT

TRANSPORTATION SECURITY AND INFRASTRUCTURE PROTECTION

MANAGEMENT, INVESTIGATIONS, AND OVERSIGHT

June 6, 2007

The Honorable Michael Chertoff
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Chertoff:

I write inquiring about an issue that is of great concern to me regarding the possible categorization of the Hmong tribe as a terrorist organization for immigration purposes.

During the 1960s and 1970s many members of the Hmong tribe fought on behalf of the United States in its clandestine war in Laos against the North Vietnamese Army. After fleeing persecution from the Laotian communist regime, the United National High Commission on Refugees designated many Hmong as refugees throughout Southeast Asia. It is my understanding that currently many Hmong are encountering significant difficulties immigrating to the US or adjusting their immigration status due to changes to the Immigration and Nationality Act regarding the definition of a terrorist organization.

Within the local Hmong community in my district, individuals feel stigmatized by the government's categorization of certain individuals as terrorists, particularly when so many brave Hmong died for the cause of the US. Although the Secretary of Homeland Security has the authority to waive prohibitions to immigrate for material supporters, some are concerned this presumes guilt. Some Hmong in America believe that their entire community is not being treated fairly by the US government.

Due to the complicated nature of this issue, please clarify the following questions. Have the Hmong people as a group at any time been explicitly categorized as a terrorist organization by the Department of Homeland Security? Have the Hmong been categorized as a terrorist organization in any other pertinent list of terrorist activity to your knowledge?

I appreciate your attention to this matter and look forward to your prompt response to my Washington, DC, office.

Sincerely,

Ed Perlmutter
Member of Congress

Assistant Secretary for Legislative Affairs
U.S. Department of Homeland Security
Washington, DC 20528

AUG 0 2 2007

Homeland Security

The Honorable Ed Perlmutter
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Perlmutter:

Thank you for your June 6, 2007 letter to Secretary Chertoff regarding the applicability of terrorism-related provisions of the Immigration and Nationality Act (INA) to certain ethnic Hmong who are seeking immigration benefits or protection. The Secretary shares your concern over the well-being of the Hmong, some of whom assisted U.S. military efforts during the Vietnam War. The Department of Homeland Security (DHS) is committed to providing benefits and protection to deserving Hmong refugees while safeguarding our Nation's security.

In response to your specific question, the U.S. Government has not explicitly categorized the Hmong people as a terrorist organization. For immigration purposes, there are two published terrorist organization lists: the Foreign Terrorist Organizations (FTO) list and the Terrorist Exclusion List (TEL), both of which are maintained by the Department of State. The Hmong do not appear on either list.

You are correct, however, that the immigration issues concerning certain Hmong are complicated. For example, certain Hmong combatants may be affected by the terrorism provisions of the INA because the activities of Hmong combatants during the Vietnam War may qualify as terrorist activities for immigration purposes. Although Hmong combatants are not named on the FTO list or the TEL, they may fall within a broader category as members of a "Tier III" terrorist organization, meaning a group of two or more individuals, whether organized or not, engaged in terrorist activities; this can include the use of any explosives, firearms, or other weapons or dangerous devices. Those combatants, along with any individuals who provided material support to them, would likely be inadmissible to the United States and barred from most forms of immigration relief or protection.

Because Congress broadly defined the terrorist provisions of the INA, the Administration has actively worked to seek viable solutions when unintended consequences result from the application of those provisions. With respect to Hmong who may be denied protection or follow-on benefits on account of the material support provisions, the Administration is currently considering whether the Secretary of State or the Secretary of Homeland Security should exercise discretionary authority to exempt certain Hmong from the material support bar.

At this time, however, the Administration does not have the authority to exempt individuals who are members of a terrorist organization or who have engaged in terrorist activities as combatants. Following extensive interagency consultations earlier this year, the Administration presented to Congress a legislative proposal designed to expand the flexibility of the existing statute to allow for application of the exemption to combatants, like the Hmong, who do not pose a threat to national security and who would otherwise be eligible for an immigration benefit or relief from removal. I have enclosed a copy of the legislative proposal and hope you will support the initiative.

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative Affairs at (202) 447-5890.

Sincerely,

Donald H. Kent, Jr.
Assistant Secretary
Office of Legislative Affairs

Enclosure

A BILL

to amend Section 212 of the Immigration and Nationality Act

SEC. 1. Amendment to Authority to Determine the Bar to Admission to be Inapplicable

Section 212(d)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. § 1182(d)(3)(B)(i)) is revised to read as follows:

> The Secretary of State, after concurrence by the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after concurrence by the Secretary of State and the Attorney General, may determine in such Secretary's sole unreviewable discretion that subsection (a)(3)(B) shall not apply with respect to an alien within the scope of that subsection, or that subsection (a)(3)(B)(vi)(III) shall not apply to a group solely by virtue of having a subgroup within the scope of that subsection. Such a determination may be revoked ab initio, without notice at any time, with respect to any and all persons subject to it. Such a determination shall neither prejudice the ability of the United States Government to commence criminal or civil proceedings involving a beneficiary of such a determination or any other person, nor create any substantive or procedural right or benefit for a beneficiary of such a determination or any other person. Notwithstanding any other provision of law (statutory or non-statutory), including but not limited to section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review such a determination or revocation. The Secretary of State may not exercise the discretion provided in this clause with respect to an alien at any time during which the alien is the subject of pending removal proceedings under section 1229a of Title 8.

SEC. 2 Technical Correction to Exception to Inadmissibility Ground for Terrorist Activities for Spouses and Children

(a) In General.—Section 212(a)(3)(B)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)) is amended by striking "Subclause (VII)" and replacing it with "Subclause (IX)"

(b) Effective Date – The amendment made by this section shall take effect on the date of the enactment of this section, and this amendment and clause 212(a)(3)(B)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(ii)), as amended by this section, shall apply to—

(1) removal proceedings instituted before, on, or after the date of the enactment of this section; and
(2) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after such date.

Exercise of Authority under Section 212(d)(3)(B)(i)
of the Immigration and Nationality Act

Following consultations with the Attorney General, the Secretary of Homeland Security and the Secretary of State hereby conclude, as a matter of discretion in accordance with the authority granted to each of us individually by Section 212(d)(3)(B)(i) of the Immigration and Nationality Act ("the Act"), considering the foreign policy and national security interests deemed relevant in these consultations, that Subsection 212(a)(3)(B)(iv)(VI) of the Act shall not apply with respect to material support provided prior to December 31, 2004, to ethnic Hmong individuals or groups, provided there is no reason to believe that the relevant activities of the recipients were targeted against noncombatants; and further provided the alien satisfies the agency or U.S. Consular Officer that he:

a) is seeking a benefit or protection under the Act and has been determined to be otherwise eligible for the benefit or protection;

b) has undergone and passed relevant background and security checks; and

c) has fully disclosed, in all relevant applications and interviews with U.S. government representatives and agents, the nature and circumstances of each provision of such material support.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets the criteria set forth above.

This exercise of authority may be revoked as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above shall apply to any subsequent benefit or protection application, unless such exercise of authority has been revoked.

The U.S. Government does not support or condone efforts to overthrow or otherwise destabilize the Government of the Lao People's Democratic Republic. This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. Government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority is not intended to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

This exercise of authority shall apply only to applicants who have been found to meet all other requirements for access to and eligibility for the program or immigration benefit for which they are applying. Among other requirements, the adjudicating U.S. Government representative must determine that the alien poses no danger to the safety and security of the United States.

In accordance with Section 212(d)(3)(B)(ii) of the Act, a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security or by the Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: 10/5/2007

Michael Chertoff
Secretary of Homeland Security

Condoleezza Rice
Secretary of State

765057

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

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http://www.house.gov/judiciary

April 4, 2008

BY FASCIMILE TRANSMISSION AND BY MAIL

The Honorable Michael Chertoff
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Chertoff:

We write regarding the March 27, 2008, memorandum issued by U.S. Citizenship and Immigration Services (USCIS) concerning the impact of certain security-related bars to admission of refugees, asylees, special immigrants and other non-citizens. While we applaud the steps taken in this guidance, we continue to be concerned at the continuing failure of the Department to implement its statutory authority to exempt deserving individuals from such bars to admission. This failure must be corrected immediately.

On December 26, 2007, the President signed into law the Consolidated Appropriations Act of 2008 ("CAA"), which provided you with increased discretionary authority to exempt individuals from certain security-related bars to admission. While waiting for the Department to issue guidance regarding this new statutory exemption authority, USCIS held in abeyance all cases that could reasonably benefit from the authority. Inexplicably, however, the Department changed this policy early in 2008 and forced the adjudication of cases prior to the effective availability of the exemption authority. The result was the regrettable denial of "green card" applications of many deserving petitioners.

One such individual was (b)(6) , an Iraqi translator whose story was highlighted by the Washington Post on March 23, 2008. (b)(6) served our Armed Forces in Iraq for almost four years, and obtained legal status in the U.S. through a special immigrant visa application personally supported by the Secretary of the Navy and General David H. Petraeus. Nevertheless, USCIS denied his application for permanent residency, based on a security-related bar to admission that could have been exempted under the new authority.

Commendably, USCIS last week reversed the decision to adjudicate and deny such cases prior to the issuance of guidance on the new exemption authority. In the memorandum mentioned above, USCIS instructed officials to withhold adjudication on all cases that could reasonably benefit from such exemptions. This guidance would appear to prevent the denial of immigration benefits to deserving individuals such as [redacted]. We have also just learned that on April 1, 2008, the Department finally exercised its exemption authority for the first time—on behalf of [redacted].

While we approve of these decisions, they are not nearly enough. More than three months have passed since the President signed the CAA into law, yet you did not exercise the statutory exemption authority provided in that Act to a single case until this last Tuesday. Coupled with the lack of effective implementation of waiver authority delegated to you nearly three years ago, this failure to act is simply inexcusable. Vulnerable refugees, asylees, and special immigrants—many of which fought alongside U.S. forces or provided invaluable service to the U.S. Government—should not have to pay the price for the Department's inability to implement statutory provisions within a reasonable amount of time.

We strongly urge you to finalize guidance on the exemption authority provided by Congress in the CAA. Please inform us expeditiously how the interim guidance set forth in the March 27 memorandum is being implemented. We are particularly interested in learning how that interim guidance has affected individuals similar to [redacted], who deserve not our censure for their activities against despotic regimes, but our thanks.

It is our shared duty to resolve the cases of deserving individuals, so that they can reunite with their families and move on with their lives. It is the least we can do for those who have risked their lives for freedom.

Sincerely,

The Honorable John Conyers Jr.
Chairman

The Honorable Zoe Lofgren
Chairwoman, Subcommittee on
Immigration, Citizenship, Refugees, Border
Security, and International Law

cc: The Honorable Lamar S. Smith
The Honorable Jeffrey Sural
The Honorable Emilio T. Gonzalez
Ms. Sarah Taylor

APR 2 3 2008

Assistant Secretary for Legislative Affairs
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

The Honorable Zoe Lofgren
U.S. House of Representatives
Washington, DC 20515

Dear Representative Lofgren:

On behalf of Secretary Chertoff, thank you for your letter of April 4, 2008, regarding the impact of the terrorism-related provisions of the Immigration and Nationality Act (Act) on refugees, asylees, special immigrants, and others seeking benefits under the Act.

The U.S. Government recognizes and strictly adheres to our international obligations regarding the protection of refugees, and at the same time, is cognizant of the serious national security challenges this country faces. The Department of Homeland Security (DHS) is committed to achieving the right balance between proactive counter-terrorism efforts and honoring the proud tradition of providing immigration benefits and protection to deserving individuals who do not pose a threat to security. U.S. law allows an effective balance to the national security concerns and the *non-refoulement* and related commitments under the 1967 Protocol Relating to the Status of Refugees.

DHS recognizes that the Act's broad definition of "engage in terrorist activity," which includes the provision of material support to individuals or organizations that have committed terrorist activity, can encompass individuals who do not pose a risk to U.S. national security, including genuine refugees who may face persecution – sometimes at the hands of terrorists themselves. As noted by the Board of Immigration Appeals (BIA), "Congress intentionally drafted the terrorist bars to relief very broadly, to include even those people described as 'freedom fighters.'" *Matter of S-K-*, 23 I&N Dec. 936, 941 (BIA 2006), *remanded by Attorney General*, 24 I&N Dec. 289 (A.G. 2007) (noting that remand "does not affect the precedential nature of the Board's conclusions" in its 2006 decision), *decided on remand*, 24 I&N Dec. 475 (BIA 2008) (granting asylum based on section 691(b) of the Consolidated Appropriations Act, 2008 (CAA), which provided that certain groups are not terrorist organizations for their acts prior to December 26, 2007). Additionally, the security-related bars have been expanded over time, such that some individuals who were admitted to the United States as refugees, or were granted asylum, face these grounds of inadmissibility for the first time when they seek adjustment of status to lawful permanent residence.

In response to these scenarios, DHS has exercised its statutory authority not to apply terrorism-related provisions to thousands of applicants for immigration benefits and protection. Specifically, as of the end of March 2008, DHS's exercise of discretionary authority had been issued to over 5,000[1] applicants for refugee status, asylum, or

[1] As of the end of March, USCIS has applied my exemption authority to 5,076 individuals who would have been otherwise ineligible for having provided material support to certain terrorist organizations.

adjustment of status, allowing these individuals to seek protection in the United States or to move one step further along the path to U.S. citizenship. As you note, DHS issued to Saman Kareem Ahmad an exemption from the terrorism-related grounds of inadmissibility on April 1, 2008, and approved his application for adjustment of status.

As discussed in your letter, the CAA amended DHS's discretionary authority not to apply certain terrorism-related provisions as they relate to undesignated terrorist organizations as defined under section 212(a)(3)(B)(vi)(III) (Tier III organizations) or to an individual alien. Additionally, section 691(b) of the CAA named certain groups[2] that are not to be considered terrorist organizations under the Act based on activities occurring prior to the December 26, 2007, enactment of the CAA, and DHS has been applying this automatic relief provision. These recent changes enhance DHS's capacity to effectively address this complex issue, and it is actively developing interpretative and operational guidance to implement these amendments to the Act.

DHS, the Departments of State (DOS), and Justice are engaged with one another and with the non-governmental organization (NGO) community to identify those individuals and groups who may be particularly deserving of exemptions under the new law. In particular, DHS anticipates authorizing an exemption for individuals associated with one of the ten groups noted above who do not benefit from the automatic relief provisions of the CAA. For example, this exemption would allow DHS to offer refugee resettlement or other immigration benefits to certain individuals who fought with the Hmong and Montagnard groups. DHS is pleased to be able to take advantage of the amended exemption provisions of the CAA for these groups, as both the Hmong and the Montagnards acted as valuable allies to the United States during the Vietnam War era. U.S. Citizenship and Immigration Services (USCIS) adjudicators are proactively identifying other possible groups for consideration for an exercise of the exemption authority.

- Of these, 964 were duress-based exemptions, and 4,112 were group-based exemptions.
- Exemptions were granted to 4,432 applicants for refugee resettlement, 33 applicants for asylum, 16 applicants for suspension of deportation or special rule cancellation of removal pursuant to Section 203 of NACARA (Nicaraguan Adjustment and Central American Relief Act of 1996), and 595 individuals were granted adjustment of status to lawful permanent residence or derivative asylum or refugee status pursuant to an I-730 petition.

[2] Section 691(b) of the CAA identifies ten groups that shall not be considered terrorist organizations under the Act on the basis of an act or event occurring prior to December 26, 2007. These are the same ten groups for which I previously exercised my discretionary authority not to apply the material support provision:

(1) Karen National Union/Karen Liberation Army (KNU/KNLA);
(2) Chin National Front/Chin National Army (CNF/CNA);
(3) Chin National League for Democracy (CNLD);
(4) Kayan New Land Party (KNLP);
(5) Arakan Liberation Party (ALP);
(6) Mustangs;
(7) Alzados;
(8) Karenni National Progressive Party;
(9) Appropriate groups affiliated with the Hmong; and,
(10) Appropriate groups affiliated with the Montagnards.

It is also important to ensure that appropriate consideration was given to all the categories of cases for which DHS may choose to exercise its discretionary authority under the Act, as amended by the CAA. Accordingly, USCIS issued a directive on March 26, 2008, instructing its adjudicators to withhold adjudication of certain categories of cases involving association with, or provision of material support to, certain terrorist organizations.

Additionally, USCIS has initiated a review of cases denied on the basis of a terrorism-related ground of inadmissibility on or after the CAA effective date to identify cases that fall within the hold categories. For cases in which jurisdiction has not vested with the Executive Office for Immigration Review (EOIR), and where the individual is not otherwise barred, USCIS will reopen those cases and place them on hold. USCIS will also consider requests to reopen or reconsider decisions issued on or after the effective date of the CAA that could benefit from the expanded exemption authority or decisions issued at any time that involved one of the 10 groups granted relief by the CAA. The hold directive notes that these motions and any requests for fee waivers should receive favorable consideration. USCIS plans to complete these reviews by April 30, 2008. DHS is also committed to establishing a process, in consultation with DOS, for re-presentation to USCIS of individuals who were previously denied refugee resettlement but who may benefit from the new legislation's automatic relief provisions or expanded exemption authority.

Finally, for asylum applicants who are in removal proceedings, although immigration judges and the Board of Immigration Appeals do not have authority to exempt terrorism-related provisions of the Act, a working group of representatives from USCIS, U.S. Immigration and Customs Enforcement, and EOIR is diligently examining the most effective process for the identification and presentation to USCIS of cases in removal proceedings that are appropriate for exemption consideration.

The Department of Homeland Security is confident that the new statutory tools described above will improve its ability to strike the proper balance between protecting the homeland and protecting deserving persons against persecution, and appreciates your active engagement on this issue.

Sincerely,

Donald H. Kent, Jr.
Assistant Secretary
Office of Legislative Affairs

JIM BUNNING
KENTUCKY

COMMITTEES:
FINANCE
ENERGY AND NATURAL RESOURCES
BANKING, HOUSING, AND URBAN AFFAIRS
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United States Senate

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April 18, 2008

The Honorable Michael Chertoff
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Chertoff:

I am writing regarding the immigration case of (b)(6) and (b)(6), a refugee from Sudan.

On February 25, 2008, (b)(6) application for Permanent Resident status was denied because of time spent as a 12 year-old boy in a training camp of the Sudan People's Liberation Army (SPLA), classified as a Tier III organization. According to (b)(6), he was removed to the camp under duress and he received no military training. Your Department does not appear to dispute his version of the facts.

Pursuant to the Consolidated Appropriations Act of 2008 (CAA) (P.L. 110-161) and a Department directive dated March 26, 2008, your Department has ordered holds placed on and further review of all cases decided after December 26, 2007, involving Tier III organizations or duress. Because his case was decided after the enactment of the CAA and prior to the Department directive, it has not been treated in accordance with the directive.

Accordingly, on April 14, 2008, (b)(6) through his attorney filed a motion to reopen his case for review. I ask that you review that motion in light of the directive, and give full and fair consideration to the case for reconsideration and on the merits in light of the CAA and evolving Department policy with respect to non-material association with such organizations.

Thank you for your attention to this matter. Feel free to contact me or have your staff contact William Henderson of my staff at 202-224-4343 if we may be of assistance.

Best personal regards,

Jim Bunning

JIM BUNNING
United States Senator

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United States Senate

WASHINGTON, DC 20510

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October 3, 2008

The Honorable Condoleezza Rice
Secretary of State
Department of State
Washington, DC 20520

The Honorable Michael Chertoff
Secretary of Homeland Security
Department of Homeland Security
Washington, DC 20528

Dear Secretary of State Rice and Secretary of Homeland Security Chertoff:

As you know, we have long been concerned about the unintended consequences of overbroad terrorism-related bars in the Immigration and Nationality Act (INA). When we learned that Burmese ethnic resistance groups, Alzados who fought Castro, and Hmong and Montagnards who fought alongside the United States were being labeled as terrorists and denied admission to the United States under the then-existing law, we changed the law. The Consolidated Appropriations Act of 2008 explicitly protects these and other similarly situated groups from being considered terrorist organizations under the INA. The legislation also gives the Administration additional discretion – discretion that the Administration itself asked for – to protect other innocent and vulnerable refugees and asylum seekers from being inadvertently labeled terrorists under the law.

Nine months have now passed, and we are writing to request information about the progress to date:

- *Refugee Program:* The Department of State had already begun to process many Burmese refugees living in camps in Thailand before the law went into effect. At the time, the Administration could admit so-called "material supporters" of Burmese ethnic resistance movements, such the Karen National Union, but could not admit active members of these groups. Families were often split up, with mothers and children granted refugee status while fathers, brothers, or uncles were turned away because of these bars.

    - What process has been put into place to re-open the cases of those fathers, brothers, and uncles previously turned away yet now eligible for refugee status under the new law?

- How many such families have been reunited as a result of the changes made by last year's law?
- Who makes the decision whether or not a refugee is eligible for a discretionary exception to the terrorism-related bars? Is there a procedure for a refugee to request a waiver? Is their a review to determine whether a denial is appropriate if the only ground for denial is one of the waive-able bars on admission found in INA §212(a)(3)(B)?

- *Adjustment of Status cases:* In February 2007, an Iraqi Kurd who had been granted asylum in the U.S. after putting his life in danger by translating for U.S. forces was told that he could not get a green card and begin the process of naturalizing, because the U.S. considered him a terrorist based on his associations with the Kurdish Democratic Party. He was among hundreds of individuals – including Afghans who fought the Soviets, Cubans who fought the Castro regime, and Sudanese associated with the DUP – who were previously granted asylum or refugee status by the U.S., yet told the U.S. now considers them terrorists and that their application to begin the process of naturalizing is therefore denied.

  On March 26, DHS issued new guidance, ordering that all such denials be halted, and that these cases be reopened and reconsidered – a big step in the right direction.

  - How have those whose applications were denied been notified that their cases will be reopened?
  - How many of those previously denied applications have been granted? How many denied? How many are still on hold, and why?
  - Have those who filed reconsideration motions been refunded their application fee?

- *Affirmative asylum cases:* We understand that several hundred affirmative asylum applications remain on hold because of these material support/terrorism-related bars. These are cases in which the applicant has cleared every other screening test, and now is waiting for a waiver eligibility determination. Many of these cases have reportedly been on hold for years.

  - How many affirmative asylum cases are currently on hold? What is the median time that these cases have been on hold? The longest?
  - Why are these cases still on hold?
  - What process is in place to adjudicate these cases?
  - Do asylum applicants have any opportunity to present information to DHS regarding their eligibility for a waiver?

- *Asylum seekers in deportation proceedings:* Other asylum seekers had already been moved into deportation proceedings before the expanded waiver authority went into effect, or have since been moved into deportation proceedings despite their eligibility for relief under the law.

    - What process is in place to determine whether such individuals in deportation proceedings are protected by the automatic relief provided by last year's law?
    - How many individuals have been moved out of deportation proceedings and granted asylum based on the automatic relief provisions in the law?
    - What process is in place to determine whether those in deportation proceedings are eligible for a discretionary waiver?
    - How many such individuals have been granted a discretionary waiver?

- *Non-Designated "Tier III" Terrorist Groups:* As you are aware, the Immigration and Nationality Act defines "terrorist organization" quite broadly to cover virtually any group of two or more individuals who unlawfully bear arms. This definition is so broad as to encompass freedom fighters who joined forces with the United States or organized to protect villagers from tyrannical regimes. In passing the Consolidated Appropriations Act, Congress gave the administration the discretion to avoid the unintended consequences of this broad definition and exempt deserving groups from this catch-all definition of "terrorist organization." We understand that the Department of Homeland security and the Department of State have identified forty such groups – including groups of Iraqis who fought against Saddam Hussein and groups Afghans who fought against the Soviets in the 1980s – but that no action has been taken on these requests.

    - Why is it taking so long to determine whether or not these groups deserve waivers?
    - What will you do to ensure that those who fought with the US against Saddam or the Soviets are no longer defined as terrorists?
    - What are you planning to do in the future to speed up this process and ensure that friends of the United States are no longer labeled "terrorists" by US immigration law?

- *Duress cases:* Last year, the Administration issued guidance for issuing waivers in so-called "duress cases" – so those who had been terrorized into providing food or services to terrorist groups would no longer be labeled "material supporters" of terrorism and denied refugee or asylum protections. But the Administration has also determined that it will not issue any duress waivers to so called "Tier I" and "Tier II" terrorist groups – those that have been explicitly designated as terrorists through a Department of Homeland Security designation process – unless and until it completes an intelligence assessment as to the group's methods and

activities. We understand that the Citizen and Immigration Service at the Department of Homeland Security asked months ago that ten groups – including the Lords Resistance Army in Uganda and the LTTE in Sri Lanka – receive such assessments, but that few of them have been completed. In the interim, rape and kidnapping victims are being defined as "material supporters of terrorism" and ineligible for asylum.

- Why is it taking so long to issue these assessments?
- Why haven't those who have been raped and forced into domestic servitude by the Lord's Resistance Army yet been issued a waiver? Why haven't those abducted by the LTTE yet been issued a waiver? Why haven't those raped and forced to do household chores for the Rebel United Front (RUF) in Sierra Leone yet been issued waivers? What will you do to ensure that such individuals can be considered for waivers?

Thank you for your time in responding to these questions.

Sincerely,

Patrick Leahy

PATRICK LEAHY
United States Senator

JON KYL
United States Senator

Assistant Secretary for Legislative Affairs
U.S. Department of Homeland Security
Washington, DC 20528

JAN 2 6 2009

Homeland Security

The Honorable Patrick Leahy
United States Senate
Washington, DC 20510

Dear Senator Leahy:

Thank you for your letter of October 3, 2008, requesting information on the processing of cases involving the terrorism-related inadmissibility grounds enumerated in the *Immigration and Nationality Act* (INA) (8 USC) and progress, to date, to implement the provisions included in the *Consolidated Appropriations Act, 2008* (CAA), Public Law No. 110-161, to protect certain groups.

Enclosed is the Department of Homeland Security's (DHS) response. The Department of State (DOS) will forward a separate response addressing the questions that pertain to their areas of responsibility. Please note that DHS and DOS continue to work on the issues raised in your letter.

I appreciate your interest in the Department of Homeland Security, and look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative Affairs at (202) 447-5890.

Sincerely,

Jim Howe
Acting Assistant Secretary
Office of Legislative Affairs

Enclosure

Department of Homeland Security (DHS) Response to Senator Leahy and Senator Kyl's Questions in October 3, 2008 Letter

1. Refugee Program

What process has been put in place to re-open the cases of those fathers, brothers, and uncles previously turned away yet now eligible for refugee status under the new law?

DHS's U.S. Citizenship and Immigration Services (USCIS) has issued guidance pursuant to Section 691 of the CAA that USCIS adjudicators should favorably consider any reapplication or motion to reopen or reconsider an application previously denied (1) if the applicant would not be considered inadmissible as a matter of law under CAA or (2) if USCIS now has the discretionary authority to exempt the alien from inadmissibility and the applicant is otherwise eligible for the benefit sought. Additionally, USCIS is processing hundreds of cases previously placed on hold that appear to benefit from the CAA provisions. Review of these cases to assess eligibility is labor intensive; the workload is being distributed between USCIS officers in the Bangkok District Office and by staff at USCIS Headquarters in Washington, D.C. In some instances, it may be necessary to conduct a re-interview in order to more fully assess eligibility for a favorable exercise of discretion.

How many such families have been reunited as a result of the changes made by last year's law?

USCIS has been processing cases under the automatic relief provisions of the CAA since the CAA was enacted. In addition, USCIS issued agency-wide guidance on the implementation of the CAA provisions, including the new exemption authority, in July 2008. The CAA provided that 10 groups, including six Burmese resistance movements like the Karen National Union, are not to be considered terrorist organizations under section 212(a)(3) of the INA based on activities that took place before the enactment of the statute. As a result, individuals who engaged in certain activities in relation to one of the named groups, such as providing material support, or who are members of one of these groups, and who are otherwise eligible for refugee resettlement, may now be approved without going through the exemption process. Cases approved under the automatic relief provisions are recorded simply as approvals and, therefore, data regarding the number of those who may have benefited from the CAA are not available. According to the Department of State records, members of 17 Burmese families (consisting of 64 individuals) chose to separate from an ineligible spouse or parent in order to resettle as refugees to the United States prior to the passage of the CAA. In addition, as noted above, USCIS is now processing cases previously placed on hold or denied and is assessing the size of the workload at this time.

Who makes the decision whether or not a refugee is eligible for a discretionary exception to the terrorist related bars? Is there a procedure for a refugee to request a waiver? Is there a review to determine whether a denial is appropriate if the only ground for denial is one of the waive-able bars on admission found in INA Section 212(a)(3)(B)?

The discretionary authority not to apply INA section 212(a)(3)(B) provisions to an alien rests with the Secretaries of State and Homeland Security. The primary use of the exemption authority to date has been by USCIS after being delegated that authority from the Secretary of Homeland Security for certain categories of aliens. Applicants for immigration benefits need not file any form to be considered for an exemption of the terrorism-related inadmissibility grounds. Exemptions are considered by USCIS during the course of adjudication for an immigration benefit. USCIS adjudicators are trained to carefully examine the record and identify those cases where a terrorism-related ground of inadmissibility or bar may be present and to consider whether the applicant is eligible for an exemption. All refugee cases, including those in which an exemption is considered, are subject to 100 percent supervisory review and certain cases require two levels of review prior to finalizing the decision. If a denied refugee applicant believes he or she should have been considered for an exemption and was not, he or she may file a Request for Reconsideration. U.S. Refugee Admissions Program Overseas Processing Entity personnel counsel refugee applicants who are denied admission regarding their options for requesting reconsideration.

2. Adjustment of Status Cases

How have those whose applications were denied been notified that their cases will be reopened?

The Nebraska Service Center (NSC) denied a total of 616 adjustment of status applications on inadmissibility grounds related to terrorist activity. Each of those cases was reviewed pursuant to the March 26, 2008 USCIS memorandum from Deputy Director Jonathan Scharfen to review, reopen, and hold certain categories of cases. For every case that was reopened and placed on hold, the NSC issued a letter to the applicant (and attorney of record, if applicable) advising that the case was reviewed, reopened, and placed on hold pending further guidance. For every case that was not reopened because it did not meet the memorandum's hold criteria, the NSC issued a letter to the applicant (and attorney of record, if applicable) advising that the case was reviewed and that the denial decision previously issued is final.

How many of those previously denied applications have been granted? How many denied? How many are still on hold, and why?

- **Approvals:** Two cases were determined to be approvable and were released for adjudication.

- **Denials:** Eight cases were determined not to meet the hold criteria and remain denied.
- **Additional Vetting:** Three cases required additional vetting before a determination could be made.
- **On hold:** 603 cases were placed on hold pending DHS exemption determinations.

Have those who filed reconsideration motions been refunded their application fee?

In 189 cases, applicants filed a motion to reopen or reconsider the denial decision. Per the March 26, 2008 memorandum, the NSC favorably considered both the motion to reopen and any accompanying fee waiver requests. All 189 cases were reopened. The applicants in 427 other cases that were reviewed did not file a motion to reopen or reconsider the denial decision. After an initial review, 419 such cases were reopened on a government motion and eight cases remained denied.

3. Affirmative Asylum Cases

How many affirmative asylum cases are currently on hold? What is the median time that these cases have been on hold? The longest?

There are currently 285 asylum cases that are in the process of review for possible material support exemptions. The median time that these cases have been on hold is just under three years, with the longest period of time being over seven years on hold. Most of the cases that have been on hold for the longest period of time involve the provision of material support under duress to a designated terrorist organization described in INA section 212(a)(3)(B)(vi)(I) (Tier I) and (Tier II).

Why are these cases still on hold?

Not all of the 285 affected affirmative asylum cases are on hold. There are 95 asylum cases that are in the process of active consideration for an exemption because they fall within the categories of cases for which there is an exemption available:

- Material support under duress to any undesignated terrorist organization described in INA section 212(a)(3)(B)(vi)(III) (Tier III): 30
- Material support under duress to an *authorized* Tier I/II organization: 65

Most of the other 190 cases on hold fall within the categories of cases that USCIS has directed adjudicators to hold in light of the expanded exemption authority provided by the CAA. For example, USCIS is holding cases involving voluntary support to a Tier III organization, as well as cases involving material support under duress to a Tier I or Tier II organization, for which USCIS has not been authorized to implement an existing exemption (e.g., organizations other than the FARC, ELN, or AUC*).

* FARC – Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia); ELN – Ejército de Liberación Nacional (National Liberation Army); AUC – Autodefensas Unidas de Colombia (United Self-Defense Forces of Colombia).

What is the process to adjudicate these cases?

Consistent with USCIS directives, each asylum case involving a duress-based material support exemption requires two levels of supervisory review. For cases interviewed on or after the implementation of the Secretary's exemption authority, the adjudicating asylum officer completes the exemption worksheet, a supervisory asylum officer conducts the first-line review, and the case is submitted to USCIS' Asylum Division for second-line review by quality assurance staff. For cases that were submitted to headquarters for quality assurance review prior to the implementation of the Secretary's exemption authority, headquarters quality assurance staff adjudicate the exemption and supervisory staff conduct first line and then second line review.

Do asylum applicants have any opportunity to present information to DHS regarding their eligibility for an exemption?

Asylum applicants can present information related to a possible exemption in the course of an asylum interview or at any point thereafter prior to the completion of the adjudication. Asylum applicants or their representatives can submit supplementary information to the asylum office with jurisdiction over the case or to the Asylum Division if the case has been submitted for quality assurance review.

4. Asylum Seekers in Removal Proceedings

What process is in place to determine whether such individuals in removal proceedings are protected by the automatic relief provided by last year's law?

DHS's U.S. Immigration and Customs Enforcement (ICE) Office of the Principal Legal Advisor (OPLA) has issued guidance regarding the CAA to all attorneys who represent DHS in removal proceedings. This guidance instructs the attorneys on the CAA provisions that require that the 10 named groups not be considered terrorist organizations under INA section 212(a)(3)(B)(vi)(III) based on actions committed prior to the statute's enactment. The guidance requires field attorneys to coordinate with the OPLA National Security Law Division if they receive a motion to reopen or have a pending case involving one of the 10 groups subject to the automatic relief provisions. Field attorneys are also required to review their dockets of national security cases to determine whether, in a particular case, a ground of inadmissibility would no longer apply (if one of the 10 named groups is involved).

How many individuals have been moved out of deportation proceedings and granted asylum based on the automatic relief provisions in the law?

To clarify, the "automatic relief provisions" of the CAA made the affected terrorism-related grounds of inadmissibility not apply rather than providing a basis for granting asylum or other immigration benefits. These grounds of inadmissibility almost always arise as bars to immigration benefits rather than as removal charges in

removal proceedings before the Executive Office for Immigration Review (EOIR), and no EOIR proceedings were terminated due to a ground of inadmissibility becoming inapplicable by the CAA. However, ICE withdrew national security bar arguments in 11 cases before EOIR following passage of the CAA. These individuals were otherwise eligible for relief and were granted asylum. Eight of these aliens had ties to the Chin National Front, two to the Karen National Front, and one to the Chin National League.

What process is in place to determine whether those in deportation proceedings are eligible for a discretionary exemption?

ICE, in consultation with USCIS and EOIR, has established procedures for the referral to USCIS of certain cases with final orders of removal where the individual may be eligible for an existing exemption. The procedures cover all detained cases with a final order of removal and non-detained cases with final administrative orders of removal issued on or after September 8, 2008.

How many such individuals have been granted a discretionary exemption?

There has been one case in removal proceedings for which USCIS granted an exemption. The case involved a Burmese national who was granted an exemption under the February 20, 2007 exercise of authority prior to the enactment of the CAA.

5. Non-Designated "Tier III" Terrorist Groups

Why is it taking so long to determine whether or not these groups deserve exemptions?

USCIS and DHS have coordinated to identify organizations that may be appropriate for additional exemptions. These groups are considered terrorist organizations under the INA because they have engaged in terrorist activity as defined under the INA, and thus the determination not to apply the grounds of inadmissibility to individuals who have supported or assisted these groups cannot be entered into lightly. In coordination with DOS, DHS has initiated examinations of several groups that have been identified in USCIS caseloads to determine groups appropriate for additional discretionary exercises of the exemption authority.

What will you do to ensure that those who fought with the U.S. against Saddam or the Soviets are no longer defined as terrorists?

We appreciate the importance of timely action on these matters and, in accordance with the requirements of INA section 212(d)(3)(B), DHS, DOS, and the Department of Justice are engaged in ongoing consultations, with careful consideration being given to both humanitarian and national security concerns. We note that there are a number of groups that have been identified by one or more agencies that are currently being considered in varying stages of the consultation process. Given that the groups

under consideration meet the statutory definition of a terrorist organization under the INA due to their activities, the determination not to apply the grounds of inadmissibility to individuals who have supported or assisted these groups is complex and requires significant deliberation.

Exemptions for undesignated organizations that fought with the United States against the Saddam Hussein regime or fought the Soviet invasion into Afghanistan are currently under consideration at the interagency level. To facilitate the exemption process in the future, DHS is also examining possible alternatives to group-by-group exemptions that would both ensure our national security and provide appropriate relief to deserving individuals seeking the protection of the United States.

What are you planning to do in the future to speed up this process and ensure that friends of the United States are no longer labeled "terrorists" by U.S. immigration law?

As mentioned above, USCIS and DHS are considering alternatives to group-by-group exemptions that would both ensure our national security and provide relief to deserving individuals seeking the protection of the United States.

6. Duress Cases

Why is it taking so long to issue these assessments [to authorize the use of the existing Tier I/II duress exemption for additional organizations]?

Why haven't those have been raped and forced into domestic servitude by the Lord's Resistance Army yet been issued a waiver? Why haven't those abducted by the LTTE yet been issued a waiver? Why haven't those raped and forced to do household chores for the [Revolutionary] United Front (RUF) in Sierra Leone yet been issued waivers? What will you do to ensure that such individuals be considered for waivers?

DHS decided to include the Intelligence Community (IC) assessment process in the implementation of the Tier I/II duress exemption because Tier I and Tier II organizations have been designated by the U.S. Government as being of particular concern to our security and are known to use violence to intimidate civilian populations. Such assessments have taken time to carefully complete and review, and DHS is reviewing how best to use IC assessments in the exemption process.

PATRICK LEAHY
Vermont

COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
APPROPRIATIONS
JUDICIARY

United States Senate

WASHINGTON, DC 20510-4502

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March 17, 2009

[redacted]
Secretary of Homeland Security
Department of Homeland Security
Washington, DC 20528

Dear Secretary Napolitano:

As you know, I have long been concerned about the unintended consequences of the overbroad terrorism-related bars in the Immigration and Nationality Act. When I learned that Burmese ethnic resistance groups, Alzados who fought Castro, and Hmong and Montagnards were being labeled as terrorists and denied admission into the United States under the then-existing law, I worked closely with Senator Jon Kyl to change the law. The Consolidated Appropriations Act of 2008 (CAA) explicitly protected these groups from being considered terrorist organizations under the INA. The legislation also gave the Administration broad discretion to protect other innocent and vulnerable refugees and asylum seekers from being inadvertently labeled "terrorists" under the law.

While the Act provided relief for thousands of deserving refugees and asylum seekers, thousands more continue to be caught up in the unreasonable legal interpretations adopted by the Bush Administration and its failure to responsibly exercise its discretion. For example, Kurds are being defined as terrorists and barred admission to the United States because they fought with the United States against the Saddam Hussein. Similarly, Afghans are being defined as terrorists and barred admission to the United States because they fought with the United States against the Soviets. Medical workers are deemed "material supporters" of terrorism because they followed their professional and ethical obligations and provided medical care to wounded persons that belonged to terrorist groups. Even child soldiers continue to be deemed terrorists and denied entry into the United States. In some cases, applications for asylum or other immigration benefits are put on indefinite "hold." In other cases, individuals are either deported or told that they cannot enter the country, without ever having the chance to even apply for an exemption to the bars. And in others, individuals who have been previously granted asylum in the United States are told they cannot get their green card because of these bars.

This country faces grave threats from terrorists around the world. But we cannot effectively fight terrorism if we cannot appropriately distinguish between friend and foe. Labeling non-partisan professionals, child victims, and supporters of the United States as terrorists only breeds resentment and ultimately undercuts the fight against terrorism. I urge you to take swift action to resolve these injustices, and ensure that innocent men, women, and children are no longer inadvertently labeled "terrorists" and turned away from the United States.

[redacted]

specifically, make the following:

Protection for medical workers: Under the Bush administration, the Department deemed [illegible] medical treatment a form of "material support" that triggered the bars on [illegible] medical workers who provide care for members of designated [illegible] are forever barred entry into the United States – even if they were carrying out their professional and ethical obligation to treat all who are wounded.

The law should be reasonably interpreted to exclude medical treatment provided by [illegible] from the definition of "material support."

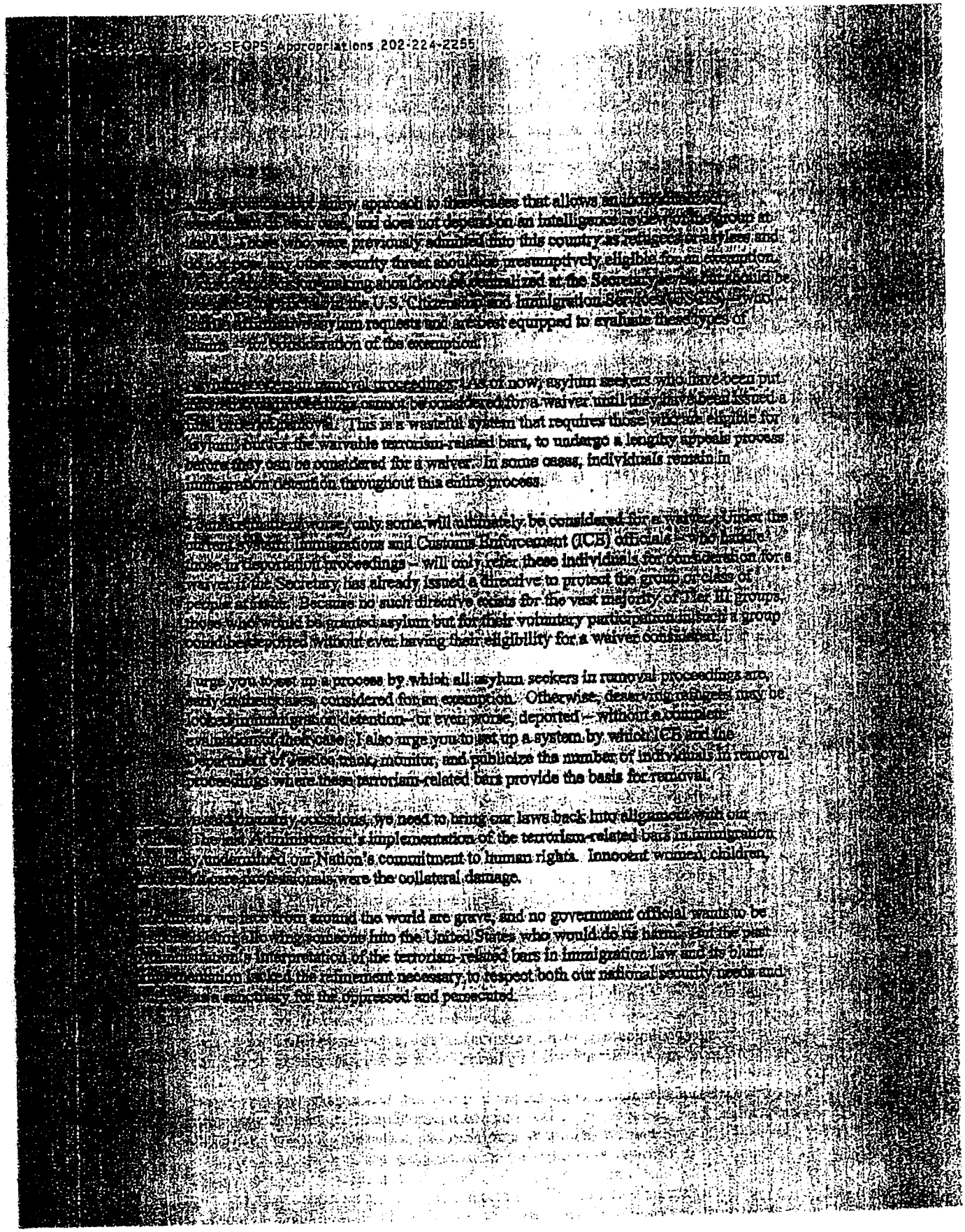
Protection for minors: Under the Bush administration's interpretation, even those who were abducted and forced to join rebel groups at age 13, 14, or 15 have since fled, and renounced all violence, are defined as members and supporters of terrorist organizations and permanently barred entry into the United States.

The law should be reasonably interpreted to protect minors forced against their will to join rebel groups from being defined as terrorists.

So-called Tier III groups: Current law specifies three categories of terrorist organizations. So-called Tier I and Tier II groups are those publicly included in the State and Treasury Departments' lists of terrorist organizations. By contrast, Tier III includes the catch-all category of groups not listed anywhere and defined so broadly as to include "two or more people" who unlawfully use a weapon. This definition is so broad as to include those protecting their villages from attack by a repressive regime or a real terrorist organization. It even includes Kurds or Afghans who have joined with the United States in the fight against Saddam Hussein and the Soviets, respectively.

Although the CAA gave the Administration the discretion to exempt deserving individual from these bars, the Bush Administration set up a painstakingly slow and unworkable process that required an intelligence assessment of the group – some of which have not existed for years – before the issuance of any individual exemptions. The Bush Administration has inexplicably sat on requests to assess approximately 29 affected Tier III groups, including the Kurdish Democratic Party, All-Burma Students Democratic Front, and mujahedeen that fought with the U.S. against the Afghans.

As of now, over 6,000 refugee, asylum, adjustment of status, and family reunification cases have been put on indefinite hold because the individual voluntarily provided support, joined, or participated in one of these "Tier III" groups and there has not yet been an intelligence assessment of the group. The vast majority of these individuals were admitted into the United States long before these bars were ever implemented, and are now being told that they are considered "terrorists" under U.S. law and cannot obtain green cards as a result.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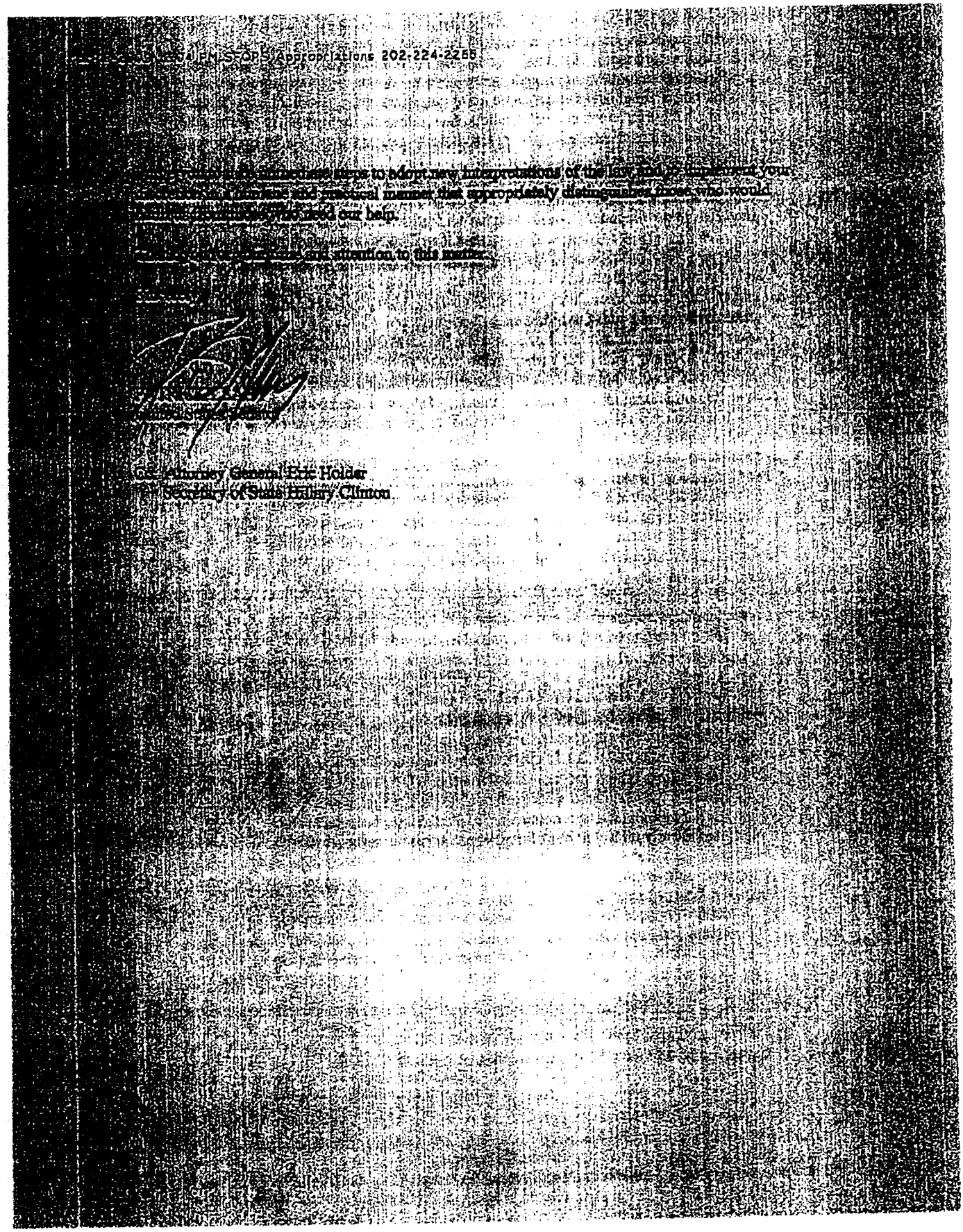

04 PM STOP 5 Appropriations 202-224-2265

to adopt new interpretations of the law today. Implement your
and practical manner that appropriately distinguishes those who would
they need our help.
and attention to this matter.

Attorney General Eric Holder
Secretary of State Hillary Clinton

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

May 5, 2009

The Honorable Patrick Leahy
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

Thank you for your March 17, 2009 letter regarding the terrorist activity-related bars in the Immigration and Nationality Act (INA) and the Secretarial discretionary exemption authority not to apply these bars.

The Department of Homeland Security (DHS) shares your concern that the terrorist activity-related provisions of the INA and the exemption authority not to apply them are used appropriately. While it is central to DHS's mission to keep out individuals who pose a threat to the safety and security of the United States, it is also central to our mission to uphold the U.S. Government's longstanding commitment to provide protection or other benefits under the INA when appropriate to eligible individuals who do not pose a threat and are deserving of relief.

Your letter highlights concerns relating to Iraqis and Afghans who fought alongside U.S. forces, child soldiers, medical workers, the group exemption process for undesignated terrorist organizations, and the process for considering exemptions for individuals in removal proceedings. The manner in which DHS and its interagency partners have addressed these issues, and others relating to the terrorist activity-related provisions of the INA, is a matter of great interest to me. Progress has been made: nearly 8,000 individuals have benefited from the exemptions that have been issued to date. However, it is also true that many thousands more are not covered under the current exemptions. Some portion of these individuals may be good candidates for exemption consideration if exemptions were available to them.

Clearly, there is more work to be done. I look forward to engaging with you, other concerned members of Congress, our Executive Branch partners, and the advocacy community to make progress to ensure that the U.S. Government optimally applies the terrorist activity-related inadmissibilities to keep out those aliens who pose a threat while also permitting appropriate relief for those who do not.

Thank you again for your letter. I have directed Deputy Assistant Secretary for Policy, Esther Olavarria, and the Special Advisor for Refugee and Asylum Affairs, Brandon Prelogar, to contact your staff to initiate an exchange of ideas. Should you wish additional information please contact me a[redacted].

Yours very truly,

Janet Napolitano

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
BRIAN A. BENCZKOWSKI, *Republican Staff Director*

October 28, 2009

The Honorable Janet Napolitano
Secretary of Homeland Security
Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Napolitano:

Early in your tenure as Secretary of Homeland Security, I wrote to you about the hardship to asylees and refugees caused by the overbroad terrorism-related bars in immigration law. In a letter dated March 17, 2009, I called upon you to exert leadership in solving the longstanding problems associated with these restrictions to admission to the United States.

My letter detailed the harm to *bona fide* refugees and asylum seekers that has been caused by the definition of terrorist activity in the immigration statute. After years of pressing the Bush Administration to resolve the issue, I worked with Senator Jon Kyl in 2007 to expand the discretion available to the agency to exempt certain categories of persons from these overbroad definitions, and to grant waivers to others. (See Consolidated Appropriations Act of 2008, or "CAA.")

I write to commend you for exercising the discretionary authority enacted in the CAA by taking action last week to exempt certain individuals associated with the Iraqi National Congress, the Kurdish Democratic Party and the Patriotic Union of Kurdistan from the material support inadmissibility grounds. These exemptions will allow individuals, many of whom supported the United States' mission in Iraq, to gain admission to the United States as refugees or asylees, assuming they can satisfy all of the traditional criteria for these forms of protection.

While the agency has made progress in granting waivers to certain categories of incoming asylees and refugees, a significant number of individuals seeking to adjust their status remain in indeterminate status. Currently, over 7,000 adjustment petitions are effectively "on hold" because the agency has not implemented the authority granted under law. Ironically, a significant percentage of the more than 7,000 pending cases are petitions from refugees or asylees who were previously admitted to the United States. They are being penalized for actions that took place prior to their admission to the United States, often for activity that was not barred at the time, and which they disclosed prior to admission. These individuals should be granted a presumption of admissibility, assuming no other factors of inadmissibility apply to their cases.

Equally troubling is the effect of agency inaction on individuals in removal proceedings. Asylum seekers in removal proceedings are not considered for a waiver of the terrorism-related bars unless and until a final order of removal is issued. This inefficient process forces asylum seekers to engage in a lengthy appeals process if they believe they have a valid claim for relief. Reviewing such cases for waivers at the early stages of removal proceedings will lead to more efficient operations within the agency and the immigration courts. It will also save genuine asylum seekers from unnecessary anguish and enable them to more quickly integrate into American society.

I appreciate the progress you have made, but I know we can do better for the 7,000 individuals whose cases are held in limbo. I will raise this issue at your oversight hearing before the Judiciary Committee on December 9, 2009. I sincerely hope that you can announce the resolution of this matter prior to that date.

Thank you for your prompt attention to this matter.

Sincerely,

PATRICK LEAHY
Chairman

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

December 9, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
Washington, DC 20510

Dear Chairman Leahy:

Thank you for your October 28, 2009 letter regarding the terrorist activity-related inadmissibility provisions in *the Immigration and Nationality Act* (INA) and the discretionary authority not to apply them in appropriate cases.

The Department of Homeland Security (DHS) remains committed to protecting the security of the United States while providing deserving applicants who pose no security threat the opportunity to seek and obtain immigration benefits through the exercise of the exemption authority. For this reason, I share your concern that the terrorist activity-related provisions of the INA and the related exemption authority are used appropriately.

Secretary of State Hillary Clinton and I were pleased to exercise our discretionary authority on September 21, 2009, to exempt from most terrorist activity-related inadmissibility grounds certain individuals associated with the Iraqi National Congress, Kurdish Democratic Party, and Patriotic Union of Kurdistan. We recognize the contributions certain individuals associated with these groups have made to the U.S. mission in Iraq.

To date, more than 11,000 individuals have benefited from exemptions. While progress has been made to address the remaining cases on hold due to the terrorist activity-related inadmissibility provisions and those that are in removal proceedings, DHS recognizes that more work needs to be done. I am aware that many of the unresolved cases may involve candidates who would merit consideration for an exemption if one were available to them.

I look forward to working with you, other concerned Members of Congress, our Federal partners, and the advocacy community to make additional progress. We want to ensure that the terrorist activity-related inadmissibility provisions are applied in a way that meets our national security concerns while also ensuring that an efficient exemption process exists to permit individuals who do not pose a security threat to receive, in a

reasonably timely manner, appropriate relief or benefits for which they are otherwise eligible.

Thank you again for your letter. Should you need additional assistance, please contact me at [redacted]

Yours very truly,

Janet Napolitano